

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 1998-338-W – ORDER NO. 2001-075

JANUARY 25, 2001

IN RE: Application of Ashley Oaks Water Systems, Inc. )	ORDER
for Approval of an Increase of its Water Rates and )	DISMISSING
Charges in its Service Area and for an Extension )	APPLICATION
of its Service Area. )	

This matter comes before the Public Service Commission of South Carolina (“the Commission”) by way of the Application of Ashley Oaks Water System, Inc. (“Ashley Oaks” or “the Company”) for approval of an increase in rates for water services in its service area in Richland County and for an extension of its service area. Ashley Oaks serves the Ashley Oaks Subdivision in Blythewood, South Carolina. Ashley Oaks was established as a water utility in 1992 by this Commission. The Company is presently operating under the rates set by this Commission in Order No. 1992-194 issued on March 13, 1992 (Docket No. 1991-554-W).

Pursuant to the instructions of the Commission’s Executive Director, the Company published a Notice of Filing, one time, in newspapers of general circulation in the Company’s service area. Additionally, the Company served a copy of the Notice of Night Hearing on all affected customers in the service area. The Company furnished affidavits to show that it had complied with the instructions of the Executive Director. A Petition to Intervene was received from David A. Miller.

Accordingly, a night hearing was held on Thursday, December 7, 2000, at 7:00 p.m. at Blythewood Park, in Blythewood, South Carolina. Additionally, a hearing was held on January 9, 2001, at 2:30 p.m. in the offices of the Commission. As per S.C. Code Ann. Section 58-3-95 (Supp. 2000), a panel, consisting of Commissioners Atkins, Clyburn, and Moseley, heard the case. Commissioner Atkins acted as Chairman. Michael D. Shelley, President of Ashley Oaks, appeared pro se for the Company. The Commission Staff (the Staff) was represented by Jocelyn Boyd, Staff Counsel and Florence P. Belser, Deputy General Counsel. The Staff presented the testimony of William P. Blume, Audit Manager 2, and Charles A. Creech, Chief of the Water and Wastewater areas of the Utilities Department.

#### **STATEMENT OF THE CASE**

Ashley Oaks is owned by Michael D. Shelley. Commission Order No. 1992-194 established water rates and charges for service provided by Ashley Oaks to its residential customers in the Ashley Oaks Subdivision in Blythewood, South Carolina. In Commission Order No. 1992-194, the Commission granted the Company's request for \$7.00 per month for basic facilities charge and \$1.95 per one thousand gallons used. In the instant Application, Ashley Oaks requests that the Commission increase its monthly service charge to \$12.00 and its rate per thousand gallons to \$3.50. Per the Company's books, its operating margin is -106.50%.

#### **STAFF'S MOTIONS**

During the hearing, the Commission Staff made a Motion to Strike the second response on page three of Shelley's prefiled testimony relating to financial statements

attached to his prefiled testimony. Additionally, Staff moved for the exclusion of the financial information attached to Shelley's prefiled testimony. Staff argued that the referenced testimony and information should be struck and excluded on the grounds that Shelley lacks personal knowledge regarding the information about which he attempted to testify and on the grounds of hearsay.

An "Explanation of Proforma Presentation of Expenses" is attached to Shelley's prefiled testimony. The second answer on the third page of his prefiled testimony reads as follows:

My accountant assisted me with these statements. She has explained them to me. There are two statements for 2001. One is used to project taxable income and loss for the water system, the other projects cash flow. Cash flow and taxable income are not the same. Both statements were requested in the initial filing with the PSC and have been prepared as a response to the PSC request. Both statements were prepared showing the largest reasonable rate increase request, and both statements will show that this rate increase is still not large enough to properly compensate all individuals performing services for the water company. Please bear with me as I read the explanation for each line item in these statements. (READ THE SPREADSHEET)

Regarding Shelley's lack of personal knowledge, Staff argued Shelley's testimony, "My accountant assisted me with these statements. She has explained them to me," indicates the financial information attached to the prefiled testimony is the accountant's, not Mr. Shelley's. Additionally, Staff argued Mr. Shelley attempted to present the out-of-court statements of his accountant to prove the expenses in this case. After the close of the Applicant's case and at the conclusion of the hearing, Staff moved to dismiss the Application based on the inability of the Company to prove its case, should

these matters be stricken from the record. Staff stated further that its Motion for Dismissal is analogous to a directed verdict in a civil case. Additionally, Staff argued the burden of proof is on the Company to demonstrate its need for a rate increase; however, absent supporting testimony or other materials, there is insufficient evidence in the record to support a rate increase.

### **DISCUSSION**

We find that Shelley's second response on the third page of his prefiled testimony should be stricken from the record on the grounds of lack of personal knowledge. The financial information attached to Shelley's prefiled testimony should be excluded from the record on the grounds of hearsay. We also find that Staff's Motion to Dismiss should be granted.

Shelley lacked personal knowledge to present testimony regarding the expenses of Ashley Oaks. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Rule 602, SCRE; *See also* Southern Welding Works, Inc. v. K & S Constr. Co., 286 S.C. 158, 163 and 164, 332 S.E.2d 102, 106 (Ct. App. 1985). We hold that Shelley's admission, "My accountant assisted me with these statements. She has explained them to me," clearly illustrates that he lacks personal knowledge to testify regarding the proforma expenses of the Company. Shelley's testimony indicates he lacks personal knowledge to testify and be cross-examined on the details of the proforma expenses. Without personal knowledge regarding the expenses of the Company, Shelley is unable to testify as to the derivation and accuracy of the expenses.

We also concur with Staff's argument that the financial information attached to Shelley's testimony is hearsay. Hearsay is "a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(C), SCRE "As evidence derived mediately through a person who has no direct knowledge of the facts to which he testifies, hearsay is inferior to evidence derived immediately through one who testifies from personal knowledge and observation." S.C. Dep't. of Soc. Services v. Doe, 292 S.C. 211, 213, 355 S.E.2d 543, 544 (Ct. App. 1987). The financial statements attached to the prefiled testimony are the out-of-court statements of Shelley's accountant, not Shelley, to prove the expenses in this case. A witness who attempts to present testimony containing hearsay, or lacks personal knowledge to testify regarding an issue, hinders opposing counsel and the court from obtaining pertinent information during cross examination. In this case, pertinent information includes the truthfulness, accuracy, and fine points of the alleged expenses.

The burden of proof rests with Ashley Oaks to prove its expenses in this case. This Commission is unable to determine if a rate increase is proper when the record lacks evidence of the Company's expenses. Due to the absence of supporting testimony in the record regarding the expenses of Ashley Oaks, there is insufficient evidence in the record to support the Company's request for a rate increase. Ashley Oaks's Application for a rate increase should be dismissed.

IT IS THEREFORE ORDERED THAT:

1. The Application of Ashley Oaks for an increase in rates and charges for water services and for an extension of its service area is hereby dismissed.

2. Ashley Oaks is directed immediately to maintain its books and records in accordance with the NARUC Uniform System of Accounts as set forth in 26 S.C. Code Ann. Regs. 103-719 (Supp. 2000). Additionally, Staff is ordered to conduct a compliance audit consistent with 26 S.C. Code Ann. Regs. 103-719 (Supp. 2000) and other applicable State laws, beginning one year from the original filing date of this Application.

3. Ashley Oaks shall file the appropriate legal documents with the Commission demonstrating ownership or an easement to the private well located on the property of Ms. Roberta Young.

4. This Order shall remain in full force and effect until further Order of this Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)